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AZ OSTEOPATHIC BOARD

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2010-000462-001 DT

06/01/2011

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT

T. Melius

Deputy

LYNN CURTIS SWEET

JAMES M MAROVICH

v.

ARIZONA BOARD OF OSTEOPATHIC  
EXAMINERS IN MEDICINE & SURGERY  
(001)

CAMILA ALARCON

OFFICE OF ADMINISTRATIVE  
HEARINGS  
REMAND DESK-LCA-CCC

MINUTE ENTRY

On March 3, 2011, this Court ordered that Plaintiff's Opening Brief shall be due Monday April 18, 2011. It further stated that, if Plaintiff did not file the Opening Brief, this Court would dismiss this appeal. According this the Court's docket, Plaintiff has not filed an Opening Brief as of this date.

**IT IS THEREFORE ORDERED** dismissing this appeal.

**IT IS FURTHER ORDERED** signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen  
THE HON. CRANE MCCLENNEN  
JUDGE OF THE SUPERIOR COURT

FILED

7-15-2010 3:20pm  
MICHAEL K. JEANES, Clerk

By T. Mellus  
T. Mellus, Deputy

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**SUPERIOR COURT OF THE STATE OF ARIZONA  
COUNTY OF MARICOPA**

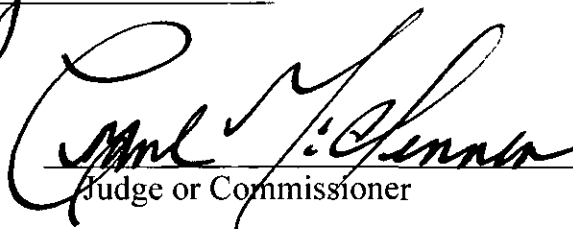
LYNN CURTIS SWEET, D.O.,	)	Case No.: LC2010-000462-001 DT
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THE ARIZONA BOARD OF	)	<b>ORDER</b>
OSTEOPATHIC EXAMINERS IN	)	
MEDICINE AND SURGERY,	)	
	)	
Defendant.	)	

This matter having come before the Court on Plaintiff's Motion to Stay, and having considered the memoranda submitted by the parties, and being fully advised in the premises, and for good causing appearing,

1 IT IS HEREBY ORDERED that Plaintiff's Motion to Stay is granted pending  
2 and until final disposition of this matter;

3 IT IS FURTHER ORDERED that this Order is subject to the condition that  
4 Plaintiff shall not prescribe Class II narcotics and shall not supervise any physician  
5 assistants during the period of time that this Order is effective.

6  
7 DATED this 15<sup>th</sup> day of July 2010.

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10   
11 Judge or Commissioner  
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1                   **BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS**  
2                   **IN MEDICINE AND SURGERY**

3   In the Matter of 4 <b>LYNN C SWEET, D.O.</b> 5   Holder of License No. <b>3246</b> 6   For the Practice of Osteopathic Medicine 7   In the State of Arizona.	Cases No. DO-09-0093A and DO-09-0181  <b>ORDER DENYING MOTION FOR REHEARING OR REVIEW</b>  (Suspension and Probation)
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8   At its public meeting on June 8, 2010, the Arizona Board of Osteopathic Examiners in  
9   Medicine and Surgery ("Board") considered a Motion for Rehearing or Review filed by  
10   Lynn Sweet, D.O. ("Respondent"). Respondent requested the Board rehear or review its  
11   March 31, 2010, Findings of Fact, Conclusions of Law and Order for Suspension and  
12   Probation in Cases no. DO-09-0093A and DO-09-018108A. The Board voted to deny the  
13   Respondent's Motion for Rehearing or Review upon due consideration of the facts and  
14   law applicable to this matter.  
15

16                   **ORDER**

17           IT IS HEREBY ORDERED that:

18           Respondent's Motion for Rehearing or Review is denied. The Board's March 31,  
19   2010, Findings of Fact, Conclusions of Law and Order for Suspension and Probation in  
20   Case no. DO-09-0093A and DO-09-018108A is effective and constitutes the Board's final  
21   administrative order.

22                   **RIGHT TO APPEAL TO SUPERIOR COURT**

23           Respondent is hereby notified that he has exhausted his administrative remedies.  
24   Respondent is advised that an appeal to Superior Court in Maricopa County may be  
25

1 taken from this decision pursuant to title 12, chapter 7, article 6 of Arizona Revised  
2 Statutes.

3 DATED this 10<sup>th</sup> day of June, 2010.



ARIZONA BOARD OF OSTEOPATHIC EXAMINERS  
IN MEDICINE AND SURGERY

10  
11 By: Elaine LeTarte  
12 Elaine LeTarte, Executive Director

13 ORIGINAL of the foregoing filed this  
14 10<sup>th</sup> day of June, 2010 with:

15 Arizona Board of Osteopathic Examiners  
16 In Medicine and Surgery  
17 9535 East Doubletree Ranch Road  
18 Scottsdale AZ 85258-5539

19 Executed copy of the foregoing  
20 mailed by U.S. Mail this 10<sup>th</sup> day of June 2010 to:

21 Jeffery C Grass, Esq  
22 101 E Park Blvd, Suite 600  
23 Plano TX 75205

24 Lynn C. Sweet, D.O.  
25 12020 S Warner Elliot Loop, Ste 101  
Phoenix, AZ 85044



1 Board voted to enter the following Findings of Fact and Conclusions of Law, and Order for  
2 Suspension and Probation in resolution of both cases.

3 **JURISDICTIONAL STATEMENTS**

4 1. The Board is empowered, pursuant to A.R.S. § 32-1800 et seq., to regulate the  
5 practice of osteopathic medicine in the State of Arizona, and the conduct of the persons licensed,  
6 registered, or permitted to practice osteopathic medicine in the State of Arizona.

7 2. Respondent is the holder of License No. 3246 issued by the Board for the practice  
8 of osteopathic medicine in the State of Arizona.

9  
10 **FINDINGS OF FACT**

11 **Case No. 09-0093A**

12 3. The Board reviewed records of fourteen (14) patients selected from a pharmacy  
13 audit of patients to whom Respondent had repeatedly prescribed large amounts and high doses of  
14 opioids and other controlled substances between the dates of April 1, 2008 and April 30, 2009.

15 4. Respondent and his professional staff (Physician Assistants or Nurse  
16 Practitioners) prescribed or refilled prescriptions for opioids and other controlled substances  
17 without physical examination or laboratory testing for patients A.S., J.H., J.M., M.D., and V.D.

18 5. Respondent and his professional staff prescribed or refilled prescriptions for  
19 opioids and other controlled substances without obtaining or reviewing prior medical records of  
20 all 14 patients, relying instead on patients' self reports of conditions and their requests for refills  
21 of medication.

22 6. Respondent and his professional staff did not recognize drug seeking behavior in  
23 patients J.M., M.D., and P.W., and continued to prescribe and refill controlled substances.

24 7. Respondent and his professional staff continued to refill prescriptions for chronic  
25 pain patients with little assessment of the patient's pain relief or improved functioning, and  
without referrals to specialists.

Case No. 09-0181A

8. The Board obtained and reviewed medical records of patient S.H., then a 22 year old male, who first presented to Respondent on June 26, 2009 stating that he had been in an ATV accident in Mexico a month prior. S.H. asked for refills of high dosages of Oxycodone, Oxycontin and Xanax. Based on S.H.'s self reported history, and without a physical examination, Respondent prescribed those refills.

9. Respondent and his professional staff did not perform physical examinations and laboratory tests typical of establishing a clinical basis for continued treatment of chronic pain. No prior medical records were requested or obtained. An x-ray study to evaluate patient S.H. was not done until November 2009, after the date Respondent was notified of the complaint.

10. Despite having patient S.H. sign a pain management contract, Respondent and his staff did not hold S.H. to the agreed upon behavior:

a. S.H. agreed to have all prescriptions filled at a designated pharmacy; yet, between June and October, 2009, S.H. filled prescriptions at three different pharmacies.

b. S.H. agreed to submit to urine screens to monitor appropriate usage of prescribed medications. Although the records state those screens were ordered, the medical records contain no laboratory results.

11. Respondent provided two sets of medical records for S.H. The first, handwritten set of records were subpoenaed and picked up from Respondent's office in October 2009. The second, computer generated set of records were provided by Respondent on November 24, 2009. The two sets of records had the following inconsistencies;

a. The computer generated records contain only the visits on June 26, July 22, and November 9, 2009. The handwritten records show additional visits on August 22, September 9, and October 1, 2009, when S.H. was seen by Respondent's professional staff.



b. The handwritten set shows no history or physical examination done on S.H.'s first visit on June 26, 2009. The computer generated set shows a detailed examination, included a nasal, ear and throat examination. Such an examination is not typical on a presenting complaint of back pain.

## CONCLUSIONS OF LAW

12. The conduct described above is a violation of unprofessional conduct pursuant to A.R.S. § 32-1854 (5), which states "Prescribing, dispensing or administering controlled substances or prescription only drugs for other than accepted therapeutic purposes."

13. The conduct described above is a violation of unprofessional conduct pursuant to A.R.S. § 32-1854 (6), which states "Engaging in the practice of medicine in a manner that harms or may harm a patient or that the board determines falls below the community standard."

14. The conduct described above is a violation of unprofessional conduct pursuant to A.R.S. § 32-1854 (21), which states "Failing or refusing to establish and maintain adequate records on a patient as follows:

(a) If the patient is an adult, for at least seven years after the last date the licensee provided the patient with medical or health care services.

(b) If the patient is a child, either for at least three years after the child's eighteenth birthday or for at least seven years after the last date the licensee provided that patient with medical or health care services, whichever date occurs first.

(c) If the patient dies before the expiration of the dates prescribed in subdivision (a) or (b) of this paragraph, for at least three years after the patient's death."

15. The conduct described above is a violation of unprofessional conduct pursuant to A.R.S. § 32-1854 (34), which states: "Lack of or inappropriate direction, collaboration or

1 supervision of a licensed, certified or registered health care provider or office personnel  
2 employed by or assigned to the physician in the medical care of patients.”

3 16. The conduct described above, is a violation of unprofessional conduct pursuant to  
4 A.R.S. § 32-1854 (36), which states: "Prescribing or dispensing controlled substances or  
5 prescription-only medications without establishing and maintaining adequate patient records.”

6 17. The conduct described above, is a violation of unprofessional conduct pursuant to  
7 A.R.S. § 32-1854 (38), which states: "Any conduct or practice that endangers a patient's or the  
8 public's health or may reasonably be expected to do so.”

9 18. The Board has taken action against Respondent’s license prior to the Investigative  
10 Hearing held on March 20, 2010, as follows:

11 (a) At its meeting on September 29, 2007 the Board issued a non-disciplinary  
12 Letter of Concern to Respondent, based on concerns about his supervision of staff and  
13 prescribing habits, and required Respondent to complete twenty (20) hours of continuing  
14 medical education in appropriate prescribing of pain medications and pain management.

15 (b) At its meeting on September 12, 2009, the Board found that Respondent  
16 had engaged in unprofessional conduct in that he did not response to multiple Board-  
17 issued subpoenas and lacked communication with the Board. The Board levied a civil  
18 penalty of \$250, which Respondent paid in a timely manner.

19 **ORDER**

20 Pursuant to the authority vested in the Board, **IT IS HEREBY ORDERED** that Lynn  
21 Sweet, D.O, holder of osteopathic medical License number 3246,

22 1. Is **SUSPENDED for a period of twelve (12) months** from the date this Order is  
23 issued. During the period of suspension Respondent shall not be present in his office(s) at any  
24 time that the office is open to patients nor shall he consult in person or electronically, or  
25 otherwise be involved in any fashion, in the practice of osteopathic medicine as defined at A.R.S.  
§32-1800(20).

2. Is placed on **PROBATION for a period of Five (5) Years** from the date the Suspension is lifted, subject to the following terms:

A. Respondent's practice is restricted in that Respondent shall not treat any patients for chronic pain nor prescribe any narcotics or opioids during the probation.

B. Any costs of compliance are to be borne by Respondent.

3. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in the State of Arizona.

4. Respondent shall appear in person before the Board or Board staff for interviews upon request, upon reasonable notice.

5. Respondent shall immediately notify the Board in writing of any change in office or home addresses and telephone numbers.

6. In the event that Respondent ceases to practice clinical medicine in the State of Arizona, for any reason, Respondent shall notify the Board that he has ceased practicing in Arizona, in writing, within 10 days of ceasing to practice. The Board may stay the terms of this Order until such time as the Respondent resumes the practice of medicine in AZ, or may take other action to resolve the findings of fact and conclusions of law contained in this Order.

7. Respondent's failure to comply with the requirements of this Order shall constitute an allegation of unprofessional conduct as defined at A.R.S. § 32-1854(25); proven violations may be grounds for further disciplinary action (e.g., suspension or revocation of license).

8. **NOTICE OF RIGHT TO REQUEST REVIEW OR REHEARING**

Respondent has the right to request a rehearing or review of this matter pursuant to A.R.S. § 41-1092.09. The request for rehearing or review must be filed with the Arizona Board of Osteopathic Examiners within thirty (30) days. If Respondent requests a review or rehearing, that request must be based on at least one of the eight grounds for review or rehearing that are

1 allowed under A.A.C. R4-22-106(D). Failure to file a motion for rehearing or review within 30  
2 days has the effect of prohibiting Respondent from seeking judicial review of the Board's  
3 decision. Service of this order is effective five (5) days after date of mailing. A.R.S. § 41-  
4 1092.09(C). If a petition for rehearing or review is not filed, the Board's Order becomes  
5 effective thirty-five (35) days after it is mailed to Respondent.  
6



7 ISSUED THIS 31<sup>st</sup> DAY OF MARCH 2010.  
8 ARIZONA BOARD OF OSTEOPATHIC EXAMINERS  
9 IN MEDICINE AND SURGERY

10 By: *Elaine LeTarte*  
11  
12 Elaine LeTarte, Executive Director  
13

14 Original "Findings of Fact, Conclusions of Law and Order for Suspension and Probation"  
15 sent by certified mail, return receipt requested this 31<sup>st</sup> day of March, 2010 to:

16 Lynn Sweet, D.O.  
17 Address of Record

18 Copies of this "Findings of Fact, Conclusions of Law and Order for Suspension and Probation"  
19 sent this 31<sup>st</sup> day of March, 2010 to:

20 Arizona Board of Osteopathic Examiners  
21 In Medicine and Surgery  
22 9535 East Doubletree Ranch Road  
23 Scottsdale AZ 85258-5539

24 Camila Alarcon, AAG  
25 Office of the Attorney General CIV/LES  
1275 West Washington  
Phoenix AZ 85007

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